

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Competitive Product Prices  
Priority Mail  
Priority Mail Contract 137

Docket No. MC2015-73

Competitive Product Prices  
Priority Mail Contracts 137 (MC2015-73)  
Negotiated Service Agreement

Docket No. CP2015-111

PUBLIC REPRESENTATIVE COMMENTS ON  
POSTAL SERVICE REQUEST TO ADD  
PRIORITY MAIL CONTRACT 137 TO  
COMPETITIVE PRODUCT LIST

(August 4, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2615.<sup>1</sup> In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Contract 137 to the competitive product list.<sup>2</sup>

The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), a public (redacted) version of Governor's Decision No. 11-6 and related analysis, a public version of Priority Mail shipping services Contract 137, and proposed changes to the Mail Classification Schedule competitive product list with the additions underlined. The Postal Service also filed under seal an unredacted version of Governor's Decision No. 11-6 and Contract 137, and supporting financial data estimating the contract value during the first year.

---

<sup>1</sup> PRC Order No. 2615, Notice and Order Concerning the Addition of Priority Mail Contract 137 to the Competitive Product List, July 28, 2015 (Notice).

<sup>2</sup> Request of the United States Postal Service to Add Priority Mail Contract 137 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, July 27, 2015 (Request).

According to the Postal Service, Priority Mail Contract 137 is a competitive product featuring rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service also maintains that the prices and classification changes applicable to Contract 137 are supported by Governors’ Decision No. 11-6.<sup>3</sup> The Postal Service further asserts that the Statement of Supporting Justification (Statement) provides support for adding Contract 137 to the competitive product list and the compliance of the instant contract with 39 U.S.C. § 3633(a). Request at 2; *Id.*, Attachment D.

The effective date for Contract 137 is one business day following the day on which the Commission issues all necessary regulatory approvals. *Id.*, Attachment B at 2 (Article II). The contract will expire 3 years from the effective date unless either party terminates the contract on 30 days’ prior written notification, or other specific events. *Id.*, Attachment B at 3 (Article III).

## COMMENTS

The Public Representative has reviewed the Postal Service’s Request, the Statement of Supporting Justification, as well as Contract 137 and the financial data filed under seal with the Postal Service’s Request. Based upon that review, the Public Representative concludes that Priority Mail Contract 137 should be classified as a competitive product and added to the competitive product list. In addition, it appears that Contract 137 in the first year should generate sufficient revenues to cover costs and thereby satisfy 39 U.S.C. § 3633(a).

### *Product List Assignment.*

Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Priority Mail Contract 137 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices

---

<sup>3</sup> Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service’s Statement of Supporting Justification (Statement) makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D at 2. These assertions appear reasonable. Based upon the Statement, the Public Representative concludes that the Postal Service’s Request to add Priority Mail Contract 137 to the competitive product list is appropriate.

*Requirements of 39 U.S.C. § 3633.*

Pursuant to 39 U.S.C. § 3633(a), the Postal Service’s competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial data, the negotiated prices for Contract 137 should generate sufficient revenues to cover costs during the first year of the contract and therefore meet the requirements of 39 U.S.C. § 3633(a).

As noted above, Contract 137 is expected to remain in effect for a period of three years. During this period, the contract includes a mechanism for the annual adjustment of prices to improve the likelihood that Contract 137 meets the requirements of 39 U.S.C. § 3633(a) over its lifetime. The annual price adjustments are linked to the generally applicable prices for Priority Mail Commercial Plus. As a result, if the Postal Service does not seek a price adjustment, or proposes a decrease in generally applicable prices for Commercial Plus, the cost coverage for Contract 137 would decline—assuming costs rise over the three-year period.

Additionally, the Postal Service must file revenue and cost data for Contract 137 in future Annual Compliance Reports. This data will permit the Commission to annually review the financial results for Priority Mail Contract 137 in future Annual Compliance Determination (ACD) reports for compliance with 39 U.S.C. § 3633(a).

*Other Issues*

The current proposal raises two general issues for contracts of this type. The Postal Service's filing does not identify a baseline agreement for this type of contract. It may be advisable to develop a baseline agreement for contract of this type, and then measure future contracts for functional equivalency. On a similar vein, there could be improved clarity regarding financial model consistency between contract of a similar type. For example, there is no "support" file provided for contracts of this type in the FY 2014 ACD. Aspects of the model provided for this contract appear to be different from models filed in the ACD. See "PM 137\_PMOD\_Public.xls" tab "PartnerUnitCosts" cell D41. There does not appear to be a financial change due to the model realignment, but creating a consistent model across similar contracts increases transparency and accountability.

*Conclusion*

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

---

JP Klingenberg  
Public Representative

901 New York Ave. NW  
Washington, DC 20268-0001  
202-789-6863  
klingejp@prc.gov